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No. 531

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In the

Supreme Court of the United States

OCTOBER TERM, 1966.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, ET AL.,

Petitioners,

vs.

JOHN J. RYAN, THOMAS MONAGHAN and CLIFFORD BECK,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondents respectfully submit that Petitioners have failed to advance any special and important reason why this Court should grant the Writ. The Court of Appeals did not sanction any departure from the accepted and usual course of judicial procedures nor have they decided on a question of Federal Law which is so broad in scope that it should be settled by this court.

QUESTION PETITIONER PRESENTS FOR REVIEW

The Respondents submit to this honorable court that the question presented by the Petitioners is not the question involved in this suit, as is clearly indicated by both the District Court and Circuit Court of Appeals Opinions. The sole question presented is whether the provisions of Title 29 U.S.C., Sec. 411 (a) (4) and 411 (5) (b) render the constitutional provision of the International Brotherhood of Electrical Workers void and of no force and effect, when such provision provides for automatic expulsion from membership for a union member seeking redress to the courts without exhausting all internal appellate procedures, which necessarily will last more than four months and up to four years.

STATEMENT OF THE CASE

The Respondents submit that the Statement of the case as set out by the Petitioners is accurate, except that neither the Trial Board, the International Vice President nor the International President had any discretion with reference to the expulsion of the Respondents. To the contrary, the International President in his decision upholding the expulsion of the Respondents states (C.A. App. 77):

> "It is my conclusion that under our Constitution no course is open to me but to dismiss the appeals of the Appellants Clifford J. Beck, Thomas Monaghan and John J. Ryan."

REASONS FOR DENYING THE WRIT

The Circuit Court of Appeals and the District Court, contrary to Petitioners' contention, decided only one limited issue, the issue being that Article XXVII, Section 1 of the Constitution of the International Brotherhood of Electrical Workers, which was incorporated into the by-

laws of Local 134, was void and of no force and effect under the provisions of Title 29 U.S.C. Section 411 (a) (4) and 411 (5) (b).

The Opinion, therefore, pertains solely to the following IBEW constitutional provision:

> "Any member resorting to the courts for redress for any injustice which he may believe has been done him by the IBEW or any of its L.U.'s, must first make use of the process available to him, INCLUDING ANY APPEAL OR APPEALS FROM ANY DECISION AGAINST HIM, WHICH MAY BE OPEN TO HIM WITHIN THE IBEW AND, FAILING TO DO SO, HE SHALL STAND AUTOMATICALLY EXPELLED AND WITHOUT RIGHTS OF ANY KIND."

It will be noted from both the Memorandum Opinion of the lower court and the Opinion of the Court of Appeals that it is the automatic expulsion factor that is most abhorrent. It is further obvious from the language of the Opinion that the Court of Appeals is dealing solely with a particular provision of a particular constitution and interpreting that provision alone with reference to Section 411 (a) (4) and 411 (5) (b).

The court states (App. C *Infra* 10-A):

> "Thus, the issue for decision is, as it was for the district court, whether Article XXVII, Section 1 of the International constitution can properly be the basis for the union discipline here involved."

The court further states (App. C *Infra* 11-A):

> "The question before us, therefore, is whether the protected right of a union member to sue his union, or its officers, may be so subjected to appellate procedures and rules by the union constitution that a

member risks expulsion by merely seeking a court's determination that he has a case not subject to the regulations in the union constitution."

In addition, the court in rendering its decision states with great particularity as follows (App. C *Infra* 13-A):

> "We hold that the Union constitution provision, Section 1 of Article XXVII, as construed by the Union, is inconsistent with Section 101 (a) (4) of the LMRDA, 29 U.S.C. Section 411 (a) (4), and is of no force and effect under Section 101 (b) of the Act, 29 U.S.C. Section 411 (b), and that plaintiffs' expulsion, predicated solely upon their violation of that Union provision, i.e., for bringing suit to restrain Local 134 from arbitrating the dispute without resort to the Union internal remedies, is unlawful, and that the district court did not err in setting the expulsion aside."

It seems, therefore, quite obvious that the contention of Petitioners as to the far reaching consequences of this Opinion is merely an attempt by them to overcome their own failure to revise their constitutional provisions to conform with Section 411 (a) (4) and 411 (5) (b). The fact that many other international unions have amended their constitutions to conform with the statute is admitted by Petitioners in their Petition filed in this court.

ARGUMENT

THE COURT OF APPEALS DID NOT SANCTION ANY DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEDURES NOR DID IT DECIDE AN IMPORTANT QUESTION OF FEDERAL LAW.

The purpose of the Labor-Management Reporting and Disclosure Act, which became effective September 14, 1959, according to Title 29 U.S.C. Section 401 (c) is:

> "The enactment of this chapter is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants and their officers and representatives which distort and defeat the policies of the Labor-Management Relations Act of 1947."

All International labor unions as well as their subordinate local unions enact by-laws and Constitutions to regulate the internal mechanisms and functions of their respective bodies. In so doing they necessarily legislate the rights and responsibilities of their membership and officers. To this end the IBEW enacted and adopted an International Constitution. Local 134 of the IBEW incorporated certain provisions of the International Constitution into its By-laws. In particular, they incorporated all of the provisions of the IBEW Constitution which pertained to internal discipline and appeals from disciplinary proceedings throughout the network of local and international unions.

In particular, we are herein concerned with Article XXVII, Section 1:

"Any member resorting to the courts for redress for any injustice which he may believe has been done him by the IBEW or any of its L.U.'s must first make use of the process available to him, INCLUDING ANY APPEAL OR APPEALS FROM ANY DECISION AGAINST HIM, WHICH MAY BE OPEN TO HIM WITHIN THE IBEW AND, FAILING TO DO SO, HE SHALL STAND AUTOMATICALLY EXPELLED AND WITHOUT RIGHTS OF ANY KIND."

There is no question but that the Respondents were expelled from Local 134 under the provisions of this section. Therefore, it must be determined if this provision of the IBEW Constitution and Local 134 By-laws is lawful or void.

Title 29 U.S.C. Section 411 (a) (4) provides:

"Protection of the right to sue—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative or legislative proceeding, or to petition the legislature or to communicate with any legislator: *Provided,* That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further,* That no interested employer or employer association shall directly or indirectly finance, encourge or participate in, except as a party, any such action, proceeding, appearance or petition."

To determine if Article XXVII, Section 1 violates Section 411 (a) (4) an analysis of the appellate procedures of the IBEW Constitution is necessary. Section 1 requires automatic expulsion if *all* appellate remedies are not exhausted.

The appeals procedures of the IBEW are contained in the Affidavit of Russell H. Olson (C.A. App. 13, 17, 18, 20). These provisions require that a union member appeal from the Local Union to the International Vice President, then to the International President and then to the International Executive Council and finally to the International Convention. There is a time limitation for the appeals of 30 days after each decision is rendered by the responsible parties. In addition, the IBEW Constitution provides that the International Convention shall convene on the third Monday in September every four years.

It is, therefore, obvious that if a union member seeks redress to the courts prior to his final appeal to the International Convention, which may be four years later, he is automatically expelled under the provisions of Article XXVII, Section 1.

In addition to the subsequent wording of the statute in Section 411 (5) (b), it is the automatic expulsion feature of this provision that is abhorrent to the expressed intent of the statute and, indeed, was abhorrent to the lower court and the Court of Appeals. To sustain the provisions of Article XXVII, Section 1 would absolve and preclude the courts from exercising jurisdiction, authority and relief to any union member merely because a labor union did not wish its members to avail themselves of their constitutional prerogatives.

Even though the Petitioners believe that it is the sole power of a labor union to regulate these inherent rights

of its members, the courts have repeatedly held that they have a basic jurisdictional power to protect the rights of union members when the situation demands. Section 411 (a) (4) codifies and secures that right.

Not only is it impossible for a labor union through its Constitution or by-laws to usurp this power of the courts, it was not and could not lawfully be the intent of Section 411 (a) (4) to accomplish this result. The obvious reasons for these conclusions is the situation wherein the labor union by its Constitution or by-laws could prevent a member from remedying an irreparable wrong even though the wrong complained of was legally remedial under the law.

In their Petition the Petitioners lay great stress upon the fact that these Respondents did receive a series of fair hearings in their various appeals. The fairness of the hearings is not an issue in this case, since no matter whether the hearings were fair or unfair, under Article XXVII, Section 1, those officers hearing the appeals had no alternative but to expel them. Perhaps the greatest indication of this lack of authority to reverse the expulsion order is contained in the decision rendered by the International President:

> "It is my conclusion that under our Constitution no course is open to me but to dismiss the appeals of Appellants Clifford J. Beck, Thomas Monaghan and John J. Ryan." (App. 77).

Therefore, Article XXVII, Section 1 of the IBEW Constitution is void in that it is contrary to the expressed language and intent of Section 411 (a) (4).

In addition to the foregoing basis for a declaration of the invalidity of Article XXVII, Section 1, we must look only to the statute itself to see that a constitutional pro-

vision or by-law such as this is of no force and effect and, therefore, void. Title 29 U.S.C. Section 411 (5) (b) reads as follows:

> "Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

Both sections 411 (a) (4) and 411 (5) (b) pertain to regulations, by-laws and constitutional provisions of the labor unions, since the only method of establishing or limiting these rights as to union members would, of necessity, be by setting them out in the by-laws and Constitution.

A further indication that Section 411 (4) pertains directly to the Constitution and by-laws is the heading of Section 411, "Constitutions and By-laws of Labor Organizations."

From the reading of the Statute, which is indicative and determinative of the intention of the Congress, it is apparent that Section 411 of the Act pertains particularly to provisions in the Constitution and by-laws of labor unions.

Since Section 411 (5) (b) states that any provision of a Constitution or by-law which is inconsistent with any of the provisions of Section 411 is to be of no force or effect, any such provision is void.

Article XXVII, Section 4, the provision under which the plaintiffs were expelled from the union, provides that before a union member may resort to the courts for redress, he must:

"First make use of the process available to him, including *any* appeal or appeals from *any* decision against him which *may* be open to him within the IBEW."

Therefore, as indicated in the preceding portion of this Argument, in order to comply with Article XXVII, Section 1, and make use of ANY appeal or appeals, the member must, of necessity, have to wait for a period of more than four months and up to four years. The only possible way that a member of Local 134 of the IBEW could exhaust all internal appellate remedies within four months would be if the charge against him was initially preferred immediately prior to the International Convention.

The Respondents were discharged from Local 134 for a violation of Article XXVII, Section 1, in failing to exhaust *all internal* appellate procedures and not for failing to use those which would be available for four months.

Section 411 of The Act, which constitutes a congressional mandate, specifically states that any constitutional provisions that do not allow redress to the courts within a reasonable period, not to exceed four months, are of no force or effect and are void. The obvious congressional intention was to require labor unions to amend their Constitutions and by-laws to comply with this mandate. The IBEW and Local 134 had five years within which to amend their Constitution and By-laws to comply with The Act but have flagrantly flouted the legislative intention of the Congress in failing to amend their regulations to comply with The Act.

In conclusion, it would appear that the obvious intent of the Congress of the United States in enacting into law Section 411 (a) (4) and (5) (b) was to require unions to provide in their Constitutions and by-laws safeguards so

that union members could seek redress to the courts within a period of no longer than four months after they were charged with a violation of union regulations. It is not contended that these sections of The Act were intended to divest labor unions of their necessary prerogative of internal discipline but only to impose reasonable restrictions by allowing members to seek legal redress. In effect it was the intention of Congress to allow labor unions to retain the right of internal discipline but to limit this right by requiring that the union adopt an internal appellate procedure that could be exhausted within four months so that a member could seek redress to the courts within a reasonable time.

Each of these Respondents was expelled solely for a violation of Article XXVII, Section 1, the terms of which are expressly contrary to the indicated provisions of the Labor-Management Reporting and Disclosure Act of 1959 in that they require a member to exhaust internal appellate remedies for a period of more than four months. The Respondents, therefore, were discharged under constitutional provisions of the IBEW Constitution which are by their very nature violative of Section 411 (a) (4). Under Section 411 (5) (b) this constitutional provision is of no force or effect and void. The Respondents have been deprived of their livelihood and rights in Local 134 under an illegal provision of the IBEW Constitution and are entitled to immediate reinstatement.

CONCLUSION

It is respectfully submitted and clearly appears from the record before this court that the Court of Appeals did not sanction a departure from the usual and accepted course of judicial procedures and did not decide an important question of Federal Law of such magnitude as to warrant action by this court. It is respectfully submitted that the Petition for a Writ of Certiorari was improvidently filed and should be denied.

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